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5
6 Counsel for Defendant SALCEDO MENDOZA
7

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,) No. CR 08-0399 PJH
12 Plaintiff,) DECLARATION OF RONALD TYLER
13 v.) AUTHENTICATING DOCUMENTS
14 JAIME SALCEDO MENDOZA) Pretrial Conference: August 27, 2008
15 Defendant.)
16

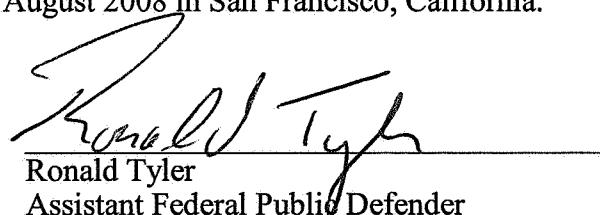
17 I, Ronald Tyler, state as follows:

18 1. I am the attorney of record for Jaime Salcedo Mendoza.
19 2. I submit this declaration to authenticate documents that I received in discovery, as well as
20 for the Court's convenience, so all supporting documentation is submitted together in a
21 single document.
22 3. Attached hereto as Exhibit A is a true and correct copy of a letter received on July 24,
23 2008 from Assistant United States Attorney Tarek Helou.
24 4. Attached hereto as Exhibit B is a true and correct copy of Excerpts of the Defendant's
25 May 6, 2003 Sentencing Memorandum, provided in discovery.
26 5. Attached hereto as Exhibit C is a true and correct copy of Excerpts of the Government's

1 May 9, 2003 Opposition, provided in discovery.

2 I declare under penalty of perjury that the foregoing is true and correct to the best of my
3 knowledge.

4 Signed and dated on the 11th day of August 2008 in San Francisco, California.

5 
6 Ronald Tyler
7 Assistant Federal Public Defender

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Exhibit A



U.S. Department of Justice

*United States Attorney
Northern District of California*

*11th Floor, Federal Building
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495*

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July 24, 2008

BY HAND-DELIVERY

Ronald Tyler
Assistant Federal Public Defender
450 Golden Gate Avenue, 19th Floor
San Francisco, California 94102

Received

JUL 24 2008

**Federal Public Defender
San Francisco**

Re: United States v. Jaime Salcedo-Mendoza
Case No. CR-08-399 PJH

Dear Mr. Tyler:

Pursuant to your June 10, 2008 request for discovery, enclosed are copies of the following:

- (1) A copy of pretrial criminal minutes from the defendant's February 21, 2003 change of plea in his previous § 1326 case, *United States v. Jaime Salcedo-Mendoza*, Case No. CR 02-40135 SBA. (Bates No. USA-326);
- (2) A copy of the defendant's February 21, 2003 Application for Permission to Enter Plea of Guilty and Order Accepting Plea in his previous § 1326 case, *United States v. Jaime Salcedo-Mendoza*, Case No. CR 02-40135 SBA. (Bates No. US0327 – USA-334);
- (3) A copy of the defendant's February 21, 2003 Plea Agreement in his previous § 1326 case, *United States v. Jaime Salcedo-Mendoza*, Case No. CR 02-40135 SBA. (Bates No. US0335 – USA-340);
- (4) A copy of the defendant's May 6, 2003 Sentencing Memorandum and Motion for Downward Departure in his previous § 1326 case, *United States v. Jaime Salcedo-Mendoza*, Case No. CR 02-40135 SBA. (Bates No. US0341 – USA-348); and
- (5) A copy of the United States' May 9, Opposition to the Defendant's Motion for Downward Departure in the defendant's previous § 1326 case, *United States v. Jaime Salcedo-Mendoza*, Case No. CR 02-40135 SBA. (Bates No. US0349 – USA-353).

The government will make available for your inspection any item of evidence referred to in the enclosed reports and documents, as well as any other evidence seized from your client and/or which the government intends to offer in its case-in-chief. Please contact me to arrange a mutually convenient time for your inspection of such items.

The enclosed materials and any future discovery provided to you which may exceed the scope of discovery mandated by the Federal Rules of Criminal Procedure, federal statute or relevant case law is provided voluntarily and solely as a matter of discretion. By producing such materials to you, the government does not waive its right to object to any future discovery requests beyond the ambit of its legal obligations. We explicitly reject any suggestion that the criminal local rules, including Criminal Local Rule 16-1(c), serve as valid authority for any substantive discovery obligations beyond that required under the applicable federal statutes and rules (e.g., Rule 16 and Jencks).

Notice Re: FRE 404(b), 608, 609

The government also hereby gives notice that it may seek to introduce the other crimes, wrongs or acts committed by defendant which are referenced in the enclosed documents pursuant to Rules 404(b), 608 and/or 609 of the Federal Rules of Evidence.

Request for Reciprocal Discovery

With this letter the government requests all reciprocal discovery to which it is entitled under Federal Rules of Criminal Procedure 16(b) and (c) and 26.2, including, but not limited to, the following:

1. Inspection and/or copies of all books, papers, documents, photographs, tangible objects, or portions thereof in the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in his case-in-chief at trial.
2. Inspection and/or copies of the results of any reports of physical or mental examinations and of scientific tests or experiments made in connection with the above-entitled case within the possession or control of the defendant which the defendant intends to introduce as evidence in his case-in-chief at trial or which have been prepared by a witness whom the defendant intends to call at trial.
3. Inspection and/or copies of all statements made by all witnesses whom the defendant intends to call at trial.

Request for Notice of Defenses

The Government also requests notice of any intention of your client to rely on an entrapment defense or a defense involving mental condition or duress, and/or an alibi defense.

Plea Negotiations

I would also like to take this opportunity to state the United States Attorney's position regarding plea negotiations, if any, in this matter. I do not have the authority to make any binding plea offer in this matter. If you wish to discuss a disposition of this matter, please be advised that all discussions are about a tentative disposition only and will not be final unless and until the final disposition is approved by the United States Attorney or an appropriate designee. Please do not assume that I have received such approval based on discussions between us or the exchange of draft plea agreements. I will advise you in writing if and when our plea negotiations have resulted in a plea agreement approved by the United States Attorney or an appropriate designee.

Please contact me if you have any questions concerning the foregoing.

Very truly yours,

JOSEPH P. RUSSONIELLO
United States Attorney



TAREK J. HELOU
Assistant United States Attorney

Encl: USA-325 – USA-353

Exhibit B

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3 Fremont, CA 94538
4 (510) 742-9292

1 Attorney for Defendant
2 JAIME SALCEDO MENDOZA

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FILED
2003 MAY - 6 AM 9:10
RICHARD V. JACKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
40135
UNITED STATES OF AMERICA, No. CR 02-401335-01-SBA

10 Plaintiff,
11 v.
12 DEFENDANT'S SENTENCING
13 MEMORANDUM AND MOTION
JAIME SALCEDO MENDOZA
DOWNWARD DEPARTURE

INTRODUCTION

Defendant Jaime Salcedo-Mendoza was named in a one-count Indictment filed on July 11, 2002, charging him with unlawful reentry into the United States following deportation. On February 21, 2003, Mr. Salcedo-Mendoza entered a plea of guilty to that charge. Sentencing is scheduled for May 13, 2003 at 9:00 a.m.

Mr. Salcedo Mendoza received the Presentence Report prepared by the United States Probation Officer Karey Knowles. The Report finds that Mr. Salcedo-Mendoza's criminal history category is IV and the Total Offense Level is 13. The resulting Sentencing Guideline Range is 24 to 30 months. The Probation Office recommends the low-end sentence of 24 months. Mr. Salcedo-Mendoza has no objection to the facts stated in the Presentence Report or the Guideline calculation it contains.

Mr. Salcedo-Mendoza respectfully requests that the Court downward depart from the Sentencing

1 Guidelines based on the Guidelines' overstatement of his criminal history, his stipulation to deportation,
2 and the mitigating cause for his return to the United States.

3

4 **STATEMENT OF FACTS¹**

5 Defendant Jaime Salcedo-Mendoza was born on December 18, 1977, in Tijuana, Mexico. He
6 was the only child born to Jesus Barabiz and Ramona Mendoza-Sanchez. Defendant's father was an
7 alcoholic and physically abusive. When Jaime was very young, his mother moved to the city to find
8 work, and left him to be raised by his grandmother. His grandmother imposed a punitive approach to
9 child care which included beating him with sticks and making Jaime hold rocks while kneeling on the
10 hard floor.

11 While still in Mexico in 1992, Mr. Salcedo-Mendoza became addicted to both drugs and
12 alcohol. He moved to the United States in 1992, and met Dora Silva, with whom he would eventually
13 have a child, Louis Enrique, who is now five years old. Throughout the 1990's, the defendant suffered
14 several drug-related convictions, which are documented in the Presentence Report. While battling his
15 drug addiction, for which he is yet to receive treatment, defendant made it a point to work hard to
16 support his wife and child. He is proud of the fact that during virtually all of his time spent in the United
17 States, he remained gainfully employed.

18 Mr. Salcedo-Mendoza committed the present offense in April of 2003, re-entering the country
19 to once again seek employment and be re-united with his family. After re-entering the country, he was
20 prosecuted for a drug related felony (Accessory), before being transferred to federal custody.

21 Ultimately, his drug addiction cost him his family. He recently separated from his wife, and is

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27 ¹All of the facts herein are taken from the Presentence Report.

resigned to the fact that he will never see his son again.

ARGUMENT

I. MR. SALCEDO-MENDOZA IS ENTITLED TO A DOWNWARD DEPARTURE
BASED ON THE EXTRAORDINARY CIRCUMSTANCES OF THIS CASE

A. Mr. Salcedo-Mendoza's Criminal History Category Calculation Overstates The Likelihood of Recidivism and Future Criminal Behavior

The Sentencing Guidelines provide that "there may be cases where the court concludes that a defendant's criminal history category significantly over-represents the seriousness of a defendant's criminal history or the likelihood that a defendant will commit further crimes." USSG section 4A1.3

J2 (e) p.s. In such cases, the court may downward depart.

Mr. Salcedo-Mendoza's criminal history calculation is an oddity that makes this such a case. Pursuant to USSG section 4A1.1(d), two points are to be added to defendant's criminal history computation if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. As the presentence report points out, defendant was sentenced to three years probation on May 6, 2002, having been convicted of a felony drug-related case in Alameda County. However, since defendant had already committed the present offense (by re-entering the United States) before being placed on probation for this felony offense, this two-point addition to Mr. Salcedo-Mendoza's criminal history calculation is inappropriate with regard to this grant of felony probation..

Technically, of course, the two-point calculation does, in fact, apply to Mr. Salcedo-Mendoza because he was placed probation for three years in Alameda County on October 28, 2001. That probation is due to expire in October of 2004, and therefore the defendant did commit the instant offense.

1 of re-entry while on that probation. However, the application of the 2002 probation in the Presentence
2 Report (as opposed to the application of the 2001 probation) results in an overstatement of defendant's
3 criminal history. Whereas the Presentence Report would have the Court impose two points based on
4 a grant of felony probation, the probation that is technically applicable was imposed after defendant
5 admitted a misdemeanor violations for Battery on a Peace Officer and Resisting Arrest. Thus, while
6 technically applicable, the two-point addition to Mr. Salcedo-Mendoza's criminal history calculation
7 based on a grant of probation in 2001 on a relatively minor misdemeanor case seems an unjust result.
8

9 The Presentence Report also correctly adds one point to Mr. Salcedo-Mendoza's criminal history
10 computation for his most recent conviction, the same drug-related felony in Alameda County. Again,
11 however, although technically an appropriate calculation, the timing of the offense skews the
12 defendant's criminal history. According to the Presentence Report, the offense was committed on April
13 21, 2002. Again, since, by definition, this offense was committed ~~after~~ defendant committed the instant
14 offense of re-entering the country, the resulting one-point calculation seems unfair. If, for example, the
15 government had been lucky enough to have arrested defendant immediately upon his re-entry into the
16 United States, his criminal history category would have reduced by one point.
17

18 Thus, Mr. Salcedo-Mendoza's criminal history calculation is overstated by the peculiarities of
19 his prior arrest record and the timing of his arrest in the instant case. Were it not for the two-point
20 addition applied because Mr. Salcedo-Mendoza was on probation for a misdemeanor and the fact that
21 he was arrested for the instant offense after, and not before, being prosecuted in state court, rather than
22 his current category IV status, five criminal history points would have resulted in a Category III
23 disposition.
24

Exhibit C

1 KEVIN V. RYAN (CSBN 118321)
2 United States Attorney
3 CHARLES B. BURCH (CSBN 79002)
4 Chief, Criminal Division
5 STEPHEN G. CORRIGAN (MASBN 100560)
6 Assistant United States Attorney

7 1301 Clay Street, Suite 340-S
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9 Telephone: (510) 637-3701
10 Fax: (510) 637-3724

11 Attorneys for Plaintiff

RECEIVED
2003 MAY -9 PM 2:15
RICHARD W. WILKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 UNITED STATES OF AMERICA,)
17 Plaintiff,
18 v.
19 JAIME SALCEDO-MENDOZA,
20 Defendant.

No. CR-02-40135-SBA

UNITED STATES' OPPOSITION TO
DEFENDANT'S MOTION FOR
DOWNWARD DEPARTURE

Date: May 14, 2003
Time: 9:00 a.m.

21 Defendant Jaime Salcedo-Mendoza moves for a downward departure from his
22 applicable guideline range of 24 to 30 months imprisonment, claiming entitlement due to
23 an overstatement of his criminal history, his agreement to be deported, and mitigating
24 circumstances related to the violation. The government opposes the motion.

BACKGROUND

25 Pursuant to terms encompassed in a written plea agreement, the defendant has pled
26 guilty to the illegal reentry following deportation, a violation of 8 U.S.C. § 1326. The
27 plea agreement includes the following language: "I agree that the Sentencing Guidelines
28 should be calculated as follows, and that I will not ask for any other adjustments to or

OPPO RE DOWNWARD DEPARTURE
CR-02-40135-SBA

Document No.
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Clerk's Office

1 reductions of the offense level [13]." Plea Agreement at ¶ 7.

2 The Presentence Report (PSR) concurs with the parties' agreement that the
 3 applicable guideline range is 13. Plea Agreement at 7.f.; PSR at ¶13. The defendant has
 4 accrued eight criminal history points (PSR at ¶28), which places him in Category IV (7,8,
 5 or 9 points). U.S.S.G. Chapter 5, Part A. The eight criminal history points include six
 6 points for several convictions and two additional points under U.S.S.G. § 4A1.1(d) for
 7 having been on probation at the time he committed the instant offense. PSR at ¶28.

8 As reported in the PSR, the defendant was born in Mexico. PSR at ¶33. Following
 9 his third felony drug conviction, he was deported from the United States on February 12,
 10 1999. PSR at ¶¶5, 23-25.

11 Since his return to the United States, the defendant has suffered two misdemeanor
 12 convictions, one for battery or a peace office and one for resisting the arrest of a peace
 13 officer, for which he was sentenced to three years probation and thirty days of jail. PSR
 14 at ¶26. The defendant has also, since his return, suffered a felony accessory conviction
 15 for which he was sentenced to five years probation and twenty-four days in jail. PSR at
 16 ¶27.

17 The defendant has been detained in federal custody on the instant offense since
 18 April 22, 2002. PSR at page 1.

19 DISCUSSION

20 The Defendant Has Failed To Show A Downward Departure Is Authorized or Warranted

21 A. The Plea Agreement Precludes such a Motion

22 By virtue of the limiting language in the plea agreement, "that I will not ask for
 23 any other adjustments to or reduction of the offense level," the defendant is precluded
 24 from seeking a sentence below the adjusted offense level, just as the government is
 25 precluded from seeking a sentence above the adjusted offense level. Hence, the
 26 Defendant's motion for a downward departure should be denied without consideration of
 27 the merits.

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